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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for Approval of 2013-2014 Energy
Efficiency Programs and Budget (U39M)

Application 12-07-001
(Filed July 2, 2012)

And Related Matters.

Application 12-07-002
Application 12-07-003
Application 12-07-004

**CORRECTED AMENDED SCOPING MEMO AND RULING OF ASSIGNED
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE RE SOUTHERN
CALIFORNIA EDISON COMPANY'S "MOTION FOR CLARIFICATION
PURSUANT TO ORDERING PARAGRAPH NUMBER 49 OF D.12-11-015"**

Introduction

This ruling amends the scope, schedule, and need for hearing in this proceeding in accordance with Rule 7.3 of the Commission's Rules of Practice and Procedure.¹

We had ambitions of resolving this more rapidly than has turned out to be the case. Unfortunately the press of other business took precedence. We are, however, resolved to moving this matter forwards expeditiously.

¹ Rule 7.3 requires the assigned Commissioner to determine the scope and schedule of a proceeding.

1. Background

As set out in in the assigned Administrative Law Judge's July 25, 2014 ruling, Southern California Edison Company (SCE) filed a "Motion for Clarification Pursuant to Ordering Paragraph #49 of D.12-11-015" on May 19, 2014. In its motion, SCE takes issue with aspects of a Utility Audit, Finance, and Compliance Branch (UAFCB), Energy Efficiency Financial Compliance Examination Report of SCE for the period January through December 31, 2011, dated September 27, 2013 (2011 Audit Report). On June 3, 2014, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Gas Company (SoCal Gas)(collectively, IOUs) filed responses to SCE's motion, generally supporting the motion, but diverging on the remedy they would have us select.

On August 5, 2014 we conducted a prehearing conference in the above-captioned matter. Unfortunately, Utility Audit, Finance, and Compliance Branch did not receive the notice of the prehearing conference and so did not participate. Nonetheless, the discussion with the attending parties helped clarify those parties' positions on the process by which we might resolve this dispute.

According to SCE, UAFCB wants SCE to break down the costs of fixed-price contracts for third-party administration of energy efficiency programs (third-party contracts) into administrative, marketing, or direct implementation costs, and to use actual contract costs to boot. SCE's position is that it has been breaking costs down using predetermined percentages, and that such a breakdown is in any event unnecessary and inimical to the Commission's policies favoring the use of fixed-price third-party contracts. SCE proposes either that we drop altogether any requirement for allocation of third-party contract costs, or, in the alternative, that we allow the use of predetermined allocation

percentages for third-party contracts. PG&E supports dropping the reporting requirement altogether, while SDG&E and SoCal Gas support use of predetermined allocation percentages. SCE, PG&E, SDG&E, and SoCal Gas assert that they have been using such predetermined allocation percentages for third-party contracts.

This dispute here is nominally between just SCE and UAFCB, and nominally related just to a single year's audit (the 2011 audit report). Conceivably we could resolve it on that basis.

However, as a practical matter any resolution will quickly draw in the other regulated utilities administering energy efficiency programs. SCE is arguing, in part, selective enforcement by UAFCB, calling into question what UAFCB requires or required of other utilities, and how SCE's accounting practices for third party contracts compare to those of the utilities. In addition, UAFCB has raised similar issues regarding other utilities' audit practices in other audit years. It is certainly possible that a decision on this issue regarding SCE may become precedential for all utilities both with respect to all prior years, and going forward.

2. Amendment of Scoping Memorandum

A Scoping Memorandum issued August 27, 2012 sets out the current scope of the proceeding. "In general, the scope of this proceeding is to evaluate the reasonableness of the utility, REN, and CCA proposals for energy efficiency programs and budgets for 2013 and 2014." The August 27, 2012 Scoping Memorandum goes on to provide additional gloss on what is within scope, but nothing in the scoping memo could reasonably be construed to encompass the dispute about the 2011 audit. Arguably the August 27, 2012 Scoping Memorandum provides an opportunity to address accounting for third party

contracts in the context of the 2013-14 energy efficiency portfolios, but that issue is not called out specifically.

So, to avoid any ambiguity we here amend the Scoping Memorandum to place in scope the proper accounting treatment in 2011 for SCE's third-party contracts, and also how to account for third-party contracts from 2015 onward for all IOUs?

This amended scoping memorandum raises no safety issues.

3. Hearings v. Workshops

The Administrative Law Judge's July 25, 2014 ruling contemplated evidentiary hearings. At the August 5, 2014 pre-hearing conference, several parties recommended workshops instead. After careful consideration, we will proceed with evidentiary hearings rather than workshops. What we seem to have before us is a policy question (*i.e.*, what information to do we require of IOUs re third-party contracts) informed by facts relating to the 2011 audit (*e.g.*, what information is available to utilities under the terms of the third-party contracts then in place; what additional terms SCE might have negotiated to obtain additional information). Accordingly, we will conduct evidentiary hearings in this proceeding.

4. Procedural Schedule

4.1 UAFCB Prepared Opening Testimony

UAFCB will serve pre-filed opening testimony. The testimony shall sponsor the relevant portions of the 2011 Audit Report. The testimony shall at minimum address the following questions:

1. Are there standard accounting rules (*e.g.*, generally accepted accounting principles, other?) that we can apply to resolve this dispute?

2. How, if at all, did SCE's 2011 accounting practice for third-party contracts diverge from the practice(s) of other energy efficiency program administrators?
3. If we were to require SCE to obtain vendor's cost information for some or all third-party contracts, how could it have done so?

The testimony may also offer further explanation of the recommendations/findings in the 2011 Audit Report, to the extent that UAFCB believes further explication will assist the Commission in this proceeding.

The testimony shall also explain what UAFCB believes the appropriate accounting standard should be from 2015 forward. With respect to future accounting practices, UAFCB should at minimum address the following questions:

1. If we allow the use of predetermined cost allocations, how do we validate such predetermined allocations absent information on vendor costs?
2. What are the potential consequences to our cost-containment policies (as reflected in the caps on, e.g., administrative costs) if we do not require allocation among cost "buckets" for third-party contracts?
3. If we require IOUs to obtain vendor cost information for some or all third-party contracts, how are they to do so?

4.2 UAFCB Initial Disclosures

When it serves its opening testimony, UAFCB will provide to all IOUs all (a) non-confidential material that (b) UAFCB reviewed in the 2011 audit (c) that is related to third party contracts. The point here is to provide all the IOUs with all non-confidential SCE, PG&E, SDG&E, and SoCal Gas material, so that UAFCB and the IOUs have a common information base to work from.

UAFCB will also provide to each IOU that particular IOU's confidential material.

If an exchange of confidential material among IOUs, or disclosure by UAFCB of one IOU's confidential information to another IOU, is necessary, UAFCB and/or one or more of the parties should file a motion for a protective order.

4.3 Additional Discovery Opens on Service of Testimony and Continues Through the Hearing

Once UAFCB serves its opening testimony and makes its initial disclosures, discovery will open and any party may serve discovery on any other party. Discovery may continue through the evidentiary hearing. We expect to close discovery at the conclusion of the hearings.

The questions here are objective ones. We do not see the need for internal UAFCB or IOU communications, and do not want to see data requests along the lines of "all communications that refer or relate to the 2011 Audit," or to third-party contracts. Discovery should be narrowly focused. Parties should avoid seeking privileged and/or confidential material to the extent possible. Overbroad discovery requests will bog this proceeding down unnecessarily; gratuitous demand for or use of confidential material will do likewise.

The ALJ will be available for email rulings if discovery disputes arise.

5. Prepared Answering Testimony

Any party may serve answering testimony. Scope is limited to the issues raised in UAFCB's opening testimony.

6. Prepared Rebuttal Testimony

Any party may serve rebuttal testimony. Scope is limited to the issues raised in the answering testimony.

7. Cross examination

We will conduct hearings on February 7, 2015. Witnesses who sponsored testimony shall be available for cross-examination.

8. Post-hearing briefing

We will set the post-hearing briefing schedule at the conclusion of evidentiary hearings.

IT IS RULED that:

1. The procedural schedule in this proceeding is adopted as set forth below.

Event	Date
UAFCB serves opening testimony and initial disclosures	11/14/14
Discovery opens	11/14/14
Answering testimony served	1/19/15
Rebuttal testimony served	1/30/15
Evidentiary hearings	2/17/15
Post-hearing briefing and submission date	TBD

This proceeding will be completed within 18 months of the date of this Scoping Memorandum.

Dated October 29, 2014, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ TODD O. EDMISTER

Todd O. Edmister
Administrative Law Judge